

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1661**

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**Introduced by Assembly Member Bonta**

February 12, 2014

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An act to add Chapter 6.4 (commencing with Section 51043) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 17276.20 and 24416.20 of, *and to add Sections 17053.31 and 23631 to*, the Revenue and Taxation Code, relating to local government.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1661, as amended, Bonta. The Healthy Options for Everyone (HOPE) Act of 2014.

The Urban Agriculture Incentive Zones Act authorizes a city, county, or city and county to establish by ordinance an Urban Agriculture Incentive Zone within its boundaries for the purpose of entering into enforceable contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands for small-scale agricultural use.

This bill would enact the Healthy Options for Everyone (HOPE) Act of 2014, and authorize a city, county, or city and county, after a public hearing, to establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods within the zone. This bill would require a city, county, or city and county to analyze specific factors, including, but not limited to, population density and transportation, when considering whether to establish a HOPE Incentive Zone within

an area. *This bill would encourage cities to issue annual permits at a discounted rate to any farmers' market operating within a HOPE Incentive Zone.*

The Personal Income Tax Law and Corporation Tax Law, in modified conformity with federal law, allow taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their tax liabilities. Existing law allows net operating losses for taxable years beginning on or after January 1, 2008, to be carried over to each of the 20 taxable years following the taxable year of the loss.

This bill would allow, under both laws, a qualified business, which is any trade or business that has primarily done business within a HOPE Incentive Zone, for taxable years beginning on or after January 1, 2015, to carryover a net operating loss to each of the 25 taxable years following the taxable year of the loss.

*The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.*

*This bill would allow a credit in the amount of 20% of the gross sales of a qualified business, as defined, that has primarily done business within a HOPE Incentive Zone during the taxable year.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Healthy Options for Everyone (HOPE) Act of 2014
- 4 provides cities, counties, and cities and counties with the ability
- 5 to provide incentives for businesses and individuals working within
- 6 HOPE Incentive Zones that can be tailored by local governments
- 7 to fit their area's unique needs.
- 8 (b) These incentives are intended to reduce the tax burden and
- 9 costs of doing business within a HOPE Incentive Zone which, in
- 10 turn, will spur the creation of new businesses, or the expansion of
- 11 existing businesses, within the zone.
- 12 (c) Incentives that will be available for individuals and
- 13 businesses working or doing business within a HOPE Incentive
- 14 Zone will include, but are not limited to, a hiring tax credit, an
- 15 expansion of the period for which a net operating loss may be

1 carried over, a tax credit for low-income individuals employed  
2 within a zone, reductions in electricity rates, assistance for  
3 developing sites within a zone, and low-interest loans for the  
4 installation and maintenance of electricity and water services.

5 SEC. 2. Chapter 6.4 (commencing with Section 51043) is added  
6 to Part 1 of Division 1 of Title 5 of the Government Code, to read:

7  
8 CHAPTER 6.4. HEALTHY OPTIONS FOR EVERYONE (HOPE) ACT  
9 OF 2014  
10

11 51043. This chapter shall be known, and may be cited, as the  
12 Healthy Options for Everyone (HOPE) Act of 2014.

13 51043.1. (a) A city, county, or city and county may, after a  
14 public hearing, establish by ordinance a HOPE Incentive Zone  
15 within its boundaries for the purpose of increasing the availability  
16 of fresh fruits and vegetables, and other grown foods.

17 (b) A city, county, or city and county shall analyze the following  
18 factors within a geographic area when considering whether to  
19 establish a HOPE Incentive Zone within that area pursuant to  
20 subdivision (a):

- 21 (1) Transportation.
- 22 (2) Population density.
- 23 (3) Income of population.
- 24 (4) Whether the area qualifies as a “food desert” by the United  
25 States Department of Agriculture.
- 26 (5) Percentage of population that participates in food assistance  
27 programs, including, but not limited to, a free school lunch  
28 program.
- 29 (6) Percentage of population with dietary-related illnesses.
- 30 (7) Neglected real property.

31 51043.2. (a) A city, county, or city and county may, after  
32 establishing a HOPE Incentive Zone pursuant to Section 51043.1,  
33 enact an ordinance to create incentives for ~~small businesses,~~  
34 ~~farmers’ markets, grocers, and other businesses that provide fresh~~  
35 ~~fruits and vegetables, and other grown foods~~ *qualified businesses*  
36 to conduct business within the zone.

37 (b) *The Legislature encourages cities, counties, or a city and*  
38 *county to issue annual permits at a discounted rate to a farmers’*  
39 *market operating within a HOPE Incentive Zone.*

1     51043.3. *For the purposes of this chapter, the following terms*  
2 *have the following meanings:*

3     (a) *“Primarily” means 80 percent or more.*

4     (b) *“Qualified business” means a business primarily engaged*  
5 *in the retail sale of canned food, dry goods, fresh fruits and*  
6 *vegetables, and fresh meats, fish, and poultry.*

7     SEC. 3. *Section 17053.31 is added to the Revenue and Taxation*  
8 *Code, to read:*

9     17053.31. (a) *There shall be allowed as a credit against the*  
10 *“net tax,” as defined by Section 17039, an amount equal to 20*  
11 *percent of the gross sales within a HOPE Incentive Zone of a*  
12 *qualified taxpayer during the taxable year.*

13     (b) *For purposes of this section, “qualified taxpayer” means a*  
14 *qualified business, as that term is used in Section 51043.3 of the*  
15 *Government Code, that has primarily done business within a HOPE*  
16 *Incentive Zone during the taxable year.*

17     (c) *“HOPE Incentive Zone” means a zone as established by*  
18 *Section 51043.1 of the Government Code.*

19     ~~SEC. 3.~~

20     SEC. 4. *Section 17276.20 of the Revenue and Taxation Code*  
21 *is amended to read:*

22     17276.20. *Except as provided in Sections 17276.1, 17276.2,*  
23 *17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided*  
24 *by Section 172 of the Internal Revenue Code, relating to net*  
25 *operating loss deduction, shall be modified as follows:*

26     (a) (1) *Net operating losses attributable to taxable years*  
27 *beginning before January 1, 1987, shall not be allowed.*

28     (2) *A net operating loss shall not be carried forward to any*  
29 *taxable year beginning before January 1, 1987.*

30     (b) (1) *Except as provided in paragraphs (2) and (3), the*  
31 *provisions of Section 172(b)(2) of the Internal Revenue Code,*  
32 *relating to amount of carrybacks and carryovers, shall be modified*  
33 *so that the applicable percentage of the entire amount of the net*  
34 *operating loss for any taxable year shall be eligible for carryover*  
35 *to any subsequent taxable year. For purposes of this subdivision,*  
36 *the applicable percentage shall be:*

37     (A) *Fifty percent for any taxable year beginning before January*  
38 *1, 2000.*

39     (B) *Fifty-five percent for any taxable year beginning on or after*  
40 *January 1, 2000, and before January 1, 2002.*

1 (C) Sixty percent for any taxable year beginning on or after  
2 January 1, 2002, and before January 1, 2004.

3 (D) One hundred percent for any taxable year beginning on or  
4 after January 1, 2004.

5 (2) In the case of a taxpayer who has a net operating loss in any  
6 taxable year beginning on or after January 1, 1994, and who  
7 operates a new business during that taxable year, each of the  
8 following shall apply to each loss incurred during the first three  
9 taxable years of operating the new business:

10 (A) If the net operating loss is equal to or less than the net loss  
11 from the new business, 100 percent of the net operating loss shall  
12 be carried forward as provided in subdivision (d).

13 (B) If the net operating loss is greater than the net loss from the  
14 new business, the net operating loss shall be carried over as  
15 follows:

16 (i) With respect to an amount equal to the net loss from the new  
17 business, 100 percent of that amount shall be carried forward as  
18 provided in subdivision (d).

19 (ii) With respect to the portion of the net operating loss that  
20 exceeds the net loss from the new business, the applicable  
21 percentage of that amount shall be carried forward as provided in  
22 subdivision (d).

23 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
24 Code, the amount described in clause (ii) of subparagraph (B) shall  
25 be absorbed before the amount described in clause (i) of  
26 subparagraph (B).

27 (3) In the case of a taxpayer who has a net operating loss in any  
28 taxable year beginning on or after January 1, 1994, and who  
29 operates an eligible small business during that taxable year, each  
30 of the following shall apply:

31 (A) If the net operating loss is equal to or less than the net loss  
32 from the eligible small business, 100 percent of the net operating  
33 loss shall be carried forward to the taxable years specified in  
34 subdivision (d).

35 (B) If the net operating loss is greater than the net loss from the  
36 eligible small business, the net operating loss shall be carried over  
37 as follows:

38 (i) With respect to an amount equal to the net loss from the  
39 eligible small business, 100 percent of that amount shall be carried  
40 forward as provided in subdivision (d).

1 (ii) With respect to that portion of the net operating loss that  
2 exceeds the net loss from the eligible small business, the applicable  
3 percentage of that amount shall be carried forward as provided in  
4 subdivision (d).

5 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
6 Code, the amount described in clause (ii) of subparagraph (B) shall  
7 be absorbed before the amount described in clause (i) of  
8 subparagraph (B).

9 (4) In the case of a taxpayer who has a net operating loss in a  
10 taxable year beginning on or after January 1, 1994, and who  
11 operates a business that qualifies as both a new business and an  
12 eligible small business under this section, that business shall be  
13 treated as a new business for the first three taxable years of the  
14 new business.

15 (5) In the case of a taxpayer who has a net operating loss in a  
16 taxable year beginning on or after January 1, 1994, and who  
17 operates more than one business, and more than one of those  
18 businesses qualifies as either a new business or an eligible small  
19 business under this section, paragraph (2) shall be applied first,  
20 except that if there is any remaining portion of the net operating  
21 loss after application of clause (i) of subparagraph (B) of that  
22 paragraph, paragraph (3) shall be applied to the remaining portion  
23 of the net operating loss as though that remaining portion of the  
24 net operating loss constituted the entire net operating loss.

25 (6) For purposes of this section, the term “net loss” means the  
26 amount of net loss after application of Sections 465 and 469 of the  
27 Internal Revenue Code.

28 (c) Section 172(b)(1) of the Internal Revenue Code, relating to  
29 years to which the loss may be carried, is modified as follows:

30 (1) Net operating loss carrybacks shall not be allowed for any  
31 net operating losses attributable to taxable years beginning before  
32 January 1, 2013.

33 (2) A net operating loss attributable to taxable years beginning  
34 on or after January 1, 2013, shall be a net operating loss carryback  
35 to each of the two taxable years preceding the taxable year of the  
36 loss in lieu of the number of years provided therein.

37 (A) For a net operating loss attributable to a taxable year  
38 beginning on or after January 1, 2013, and before January 1, 2014,  
39 the amount of carryback to any taxable year shall not exceed 50  
40 percent of the net operating loss.

1 (B) For a net operating loss attributable to a taxable year  
2 beginning on or after January 1, 2014, and before January 1, 2015,  
3 the amount of carryback to any taxable year shall not exceed 75  
4 percent of the net operating loss.

5 (C) For a net operating loss attributable to a taxable year  
6 beginning on or after January 1, 2015, the amount of carryback to  
7 any taxable year shall not exceed 100 percent of the net operating  
8 loss.

9 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
10 Internal Revenue Code, relating to special rules for REITs, and  
11 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
12 excess interest loss, and Section 172(h) of the Internal Revenue  
13 Code, relating to corporate equity reduction interest losses, shall  
14 apply as provided.

15 (4) A net operating loss carryback shall not be carried back to  
16 any taxable year beginning before January 1, 2011.

17 (d) (1) (A) For a net operating loss for any taxable year  
18 beginning on or after January 1, 1987, and before January 1, 2000,  
19 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified  
20 to substitute “five taxable years” in lieu of “20 taxable years”  
21 except as otherwise provided in paragraphs (2) and (3).

22 (B) For a net operating loss for any taxable year beginning on  
23 or after January 1, 2000, and before January 1, 2008, Section  
24 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
25 substitute “10 taxable years” in lieu of “20 taxable years.”

26 (2) For any taxable year beginning before January 1, 2000, in  
27 the case of a “new business,” the “five taxable years” in paragraph  
28 (1) shall be modified to read as follows:

29 (A) “Eight taxable years” for a net operating loss attributable  
30 to the first taxable year of that new business.

31 (B) “Seven taxable years” for a net operating loss attributable  
32 to the second taxable year of that new business.

33 (C) “Six taxable years” for a net operating loss attributable to  
34 the third taxable year of that new business.

35 (3) For any carryover of a net operating loss for which a  
36 deduction is denied by Section 17276.3, the carryover period  
37 specified in this subdivision shall be extended as follows:

38 (A) By one year for a net operating loss attributable to taxable  
39 years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(5) (A) For a net operating loss for any taxable year beginning on or after January 1, 2015, in the case of a “qualified business,” Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute “25 taxable years” in lieu of “20 taxable years.”

(B) For purposes of this paragraph, “qualified business” means ~~any trade or business~~ *a qualified business, as that term is used in Section 51043.3 of the Government Code*, that has primarily done business within a HOPE Incentive Zone, as established by Section 51043.1 of the Government Code, during the taxable year.

(e) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or “S” corporation paragraphs (1) and (2) shall be applied to the partnership or “S” corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall



1 not be treated as a new business if the aggregate fair market value  
2 of the acquired assets (including real, personal, tangible, and  
3 intangible property) used by the taxpayer (or any related person)  
4 in the conduct of its trade or business exceeds 20 percent of the  
5 aggregate fair market value of the total assets of the trade or  
6 business being conducted by the taxpayer (or any related person).

7 For purposes of this paragraph only, the following rules shall apply:

8 (A) The determination of the relative fair market values of the  
9 acquired assets and the total assets shall be made as of the last day  
10 of the first taxable year in which the taxpayer (or any related  
11 person) first uses any of the acquired trade or business assets in  
12 its business activity.

13 (B) Any acquired assets that constituted property described in  
14 Section 1221(1) of the Internal Revenue Code in the hands of the  
15 transferor shall not be treated as assets acquired from an existing  
16 trade or business, unless those assets also constitute property  
17 described in Section 1221(1) of the Internal Revenue Code in the  
18 hands of the acquiring taxpayer (or related person).

19 (2) In any case where a taxpayer (or any related person) is  
20 engaged in one or more trade or business activities in this state, or  
21 has been engaged in one or more trade or business activities in this  
22 state within the preceding 36 months (“prior trade or business  
23 activity”), and thereafter commences an additional trade or business  
24 activity in this state, the additional trade or business activity shall  
25 only be treated as a new business if the additional trade or business  
26 activity is classified under a different division of the Standard  
27 Industrial Classification (SIC) Manual published by the United  
28 States Office of Management and Budget, 1987 edition, than are  
29 any of the taxpayer’s (or any related person’s) current or prior  
30 trade or business activities.

31 (3) In any case where a taxpayer, including all related persons,  
32 is engaged in trade or business activities wholly outside of this  
33 state and the taxpayer first commences doing business in this state  
34 (within the meaning of Section 23101) after December 31, 1993  
35 (other than by purchase or other acquisition described in paragraph  
36 (1)), the trade or business activity shall be treated as a new business  
37 under paragraph (2) of subdivision (e).

38 (4) In any case where the legal form under which a trade or  
39 business activity is being conducted is changed, the change in form  
40 shall be disregarded and the determination of whether the trade or

1 business activity is a new business shall be made by treating the  
2 taxpayer as having purchased or otherwise acquired all or any  
3 portion of the assets of an existing trade or business under the rules  
4 of paragraph (1).

5 (5) “Related person” shall mean any person that is related to  
6 the taxpayer under either Section 267 or 318 of the Internal  
7 Revenue Code.

8 (6) “Acquire” shall include any gift, inheritance, transfer incident  
9 to divorce, or any other transfer, whether or not for consideration.

10 (7) (A) For taxable years beginning on or after January 1, 1997,  
11 the term “new business” shall include any taxpayer that is engaged  
12 in biopharmaceutical activities or other biotechnology activities  
13 that are described in Codes 2833 to 2836, inclusive, of the Standard  
14 Industrial Classification (SIC) Manual published by the United  
15 States Office of Management and Budget, 1987 edition, and as  
16 further amended, and that has not received regulatory approval for  
17 any product from the Food and Drug Administration.

18 (B) For purposes of this paragraph:

19 (i) “Biopharmaceutical activities” means those activities that  
20 use organisms or materials derived from organisms, and their  
21 cellular, subcellular, or molecular components, in order to provide  
22 pharmaceutical products for human or animal therapeutics and  
23 diagnostics. Biopharmaceutical activities make use of living  
24 organisms to make commercial products, as opposed to  
25 pharmaceutical activities that make use of chemical compounds  
26 to produce commercial products.

27 (ii) “Other biotechnology activities” means activities consisting  
28 of the application of recombinant DNA technology to produce  
29 commercial products, as well as activities regarding pharmaceutical  
30 delivery systems designed to provide a measure of control over  
31 the rate, duration, and site of pharmaceutical delivery.

32 (g) In computing the modifications under Section 172(d)(2) of  
33 the Internal Revenue Code, relating to capital gains and losses of  
34 taxpayers other than corporations, the exclusion provided by  
35 Section 18152.5 shall not be allowed.

36 (h) Notwithstanding any provisions of this section to the  
37 contrary, a deduction shall be allowed to a “qualified taxpayer” as  
38 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,  
39 and 17276.7.

1 (i) The Franchise Tax Board may prescribe appropriate  
2 regulations to carry out the purposes of this section, including any  
3 regulations necessary to prevent the avoidance of the purposes of  
4 this section through splitups, shell corporations, partnerships, tiered  
5 ownership structures, or otherwise.

6 (j) The Franchise Tax Board may reclassify any net operating  
7 loss carryover determined under either paragraph (2) or (3) of  
8 subdivision (b) as a net operating loss carryover under paragraph  
9 (1) of subdivision (b) upon a showing that the reclassification is  
10 necessary to prevent evasion of the purposes of this section.

11 (k) Except as otherwise provided, the amendments made by  
12 Chapter 107 of the Statutes of 2000 shall apply to net operating  
13 losses for taxable years beginning on or after January 1, 2000.

14 *SEC. 5. Section 23631 is added to the Revenue and Taxation*  
15 *Code, to read:*

16 *23631. (a) There shall be allowed as a credit against the "tax,"*  
17 *as defined by Section 23036, an amount equal to 20 percent of the*  
18 *gross sales within a HOPE Incentive Zone of a qualified taxpayer*  
19 *during the taxable year.*

20 *(b) For purposes of this section, "qualified taxpayer" means a*  
21 *qualified business, as that term is used in Section 51043.3 of the*  
22 *Government Code, that has primarily done business within a HOPE*  
23 *Incentive Zone during the taxable year.*

24 *(c) "HOPE Incentive Zone" means a zone as established by*  
25 *Section 51043.1 of the Government Code.*

26 ~~SEC. 4.~~

27 *SEC. 6. Section 24416.20 of the Revenue and Taxation Code*  
28 *is amended to read:*

29 *24416.20. Except as provided in Sections 24416.1, 24416.2,*  
30 *24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss*  
31 *deduction shall be allowed in computing net income under Section*  
32 *24341 and shall be determined in accordance with Section 172 of*  
33 *the Internal Revenue Code, except as otherwise provided.*

34 *(a) (1) Net operating losses attributable to taxable years*  
35 *beginning before January 1, 1987, shall not be allowed.*

36 *(2) A net operating loss shall not be carried forward to any*  
37 *taxable year beginning before January 1, 1987.*

38 *(b) (1) Except as provided in paragraphs (2) and (3), the*  
39 *provisions of Section 172(b)(2) of the Internal Revenue Code,*  
40 *relating to amount of carrybacks and carryovers, shall be modified*

1 so that the applicable percentage of the entire amount of the net  
2 operating loss for any taxable year shall be eligible for carryover  
3 to any subsequent taxable year. For purposes of this subdivision,  
4 the applicable percentage shall be:

5 (A) Fifty percent for any taxable year beginning before January  
6 1, 2000.

7 (B) Fifty-five percent for any taxable year beginning on or after  
8 January 1, 2000, and before January 1, 2002.

9 (C) Sixty percent for any taxable year beginning on or after  
10 January 1, 2002, and before January 1, 2004.

11 (D) One hundred percent for any taxable year beginning on or  
12 after January 1, 2004.

13 (2) In the case of a taxpayer who has a net operating loss in any  
14 taxable year beginning on or after January 1, 1994, and who  
15 operates a new business during that taxable year, each of the  
16 following shall apply to each loss incurred during the first three  
17 taxable years of operating the new business:

18 (A) If the net operating loss is equal to or less than the net loss  
19 from the new business, 100 percent of the net operating loss shall  
20 be carried forward as provided in subdivision (e).

21 (B) If the net operating loss is greater than the net loss from the  
22 new business, the net operating loss shall be carried over as  
23 follows:

24 (i) With respect to an amount equal to the net loss from the new  
25 business, 100 percent of that amount shall be carried forward as  
26 provided in subdivision (e).

27 (ii) With respect to the portion of the net operating loss that  
28 exceeds the net loss from the new business, the applicable  
29 percentage of that amount shall be carried forward as provided in  
30 subdivision (d).

31 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
32 Code, the amount described in clause (ii) of subparagraph (B) shall  
33 be absorbed before the amount described in clause (i) of  
34 subparagraph (B).

35 (3) In the case of a taxpayer who has a net operating loss in any  
36 taxable year beginning on or after January 1, 1994, and who  
37 operates an eligible small business during that taxable year, each  
38 of the following shall apply:

39 (A) If the net operating loss is equal to or less than the net loss  
40 from the eligible small business, 100 percent of the net operating

1 loss shall be carried forward to the taxable years specified in  
2 paragraph (1) of subdivision (e).

3 (B) If the net operating loss is greater than the net loss from the  
4 eligible small business, the net operating loss shall be carried over  
5 as follows:

6 (i) With respect to an amount equal to the net loss from the  
7 eligible small business, 100 percent of that amount shall be carried  
8 forward as provided in subdivision (e).

9 (ii) With respect to that portion of the net operating loss that  
10 exceeds the net loss from the eligible small business, the applicable  
11 percentage of that amount shall be carried forward as provided in  
12 subdivision (e).

13 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
14 Code, the amount described in clause (ii) of subparagraph (B) shall  
15 be absorbed before the amount described in clause (i) of  
16 subparagraph (B).

17 (4) In the case of a taxpayer who has a net operating loss in a  
18 taxable year beginning on or after January 1, 1994, and who  
19 operates a business that qualifies as both a new business and an  
20 eligible small business under this section, that business shall be  
21 treated as a new business for the first three taxable years of the  
22 new business.

23 (5) In the case of a taxpayer who has a net operating loss in a  
24 taxable year beginning on or after January 1, 1994, and who  
25 operates more than one business, and more than one of those  
26 businesses qualifies as either a new business or an eligible small  
27 business under this section, paragraph (2) shall be applied first,  
28 except that if there is any remaining portion of the net operating  
29 loss after application of clause (i) of subparagraph (B) of paragraph  
30 (2), paragraph (3) shall be applied to the remaining portion of the  
31 net operating loss as though that remaining portion of the net  
32 operating loss constituted the entire net operating loss.

33 (6) For purposes of this section, “net loss” means the amount  
34 of net loss after application of Sections 465 and 469 of the Internal  
35 Revenue Code.

36 (c) For any taxable year in which the taxpayer has in effect a  
37 water’s-edge election under Section 25110, the deduction of a net  
38 operating loss carryover shall be denied to the extent that the net  
39 operating loss carryover was determined by taking into account  
40 the income and factors of an affiliated corporation in a combined

1 report whose income and apportionment factors would not have  
2 been taken into account if a water's-edge election under Section  
3 25110 had been in effect for the taxable year in which the loss was  
4 incurred.

5 (d) Section 172(b)(1) of the Internal Revenue Code, relating to  
6 years to which the loss may be carried, is modified as follows:

7 (1) Net operating loss carrybacks shall not be allowed for any  
8 net operating losses attributable to taxable years beginning before  
9 January 1, 2013.

10 (2) A net operating loss attributable to taxable years beginning  
11 on or after January 1, 2013, shall be a net operating loss carryback  
12 to each of the two taxable years preceding the taxable year of the  
13 loss in lieu of the number of years provided therein.

14 (A) For a net operating loss attributable to a taxable year  
15 beginning on or after January 1, 2013, and before January 1, 2014,  
16 the amount of carryback to any taxable year shall not exceed 50  
17 percent of the net operating loss.

18 (B) For a net operating loss attributable to a taxable year  
19 beginning on or after January 1, 2014, and before January 1, 2015,  
20 the amount of carryback to any taxable year shall not exceed 75  
21 percent of the net operating loss.

22 (C) For a net operating loss attributable to a taxable year  
23 beginning on or after January 1, 2015, the amount of carryback to  
24 any taxable year shall not exceed 100 percent of the net operating  
25 loss.

26 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
27 Internal Revenue Code, relating to special rules for REITs, and  
28 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
29 excess interest loss, and Section 172(h) of the Internal Revenue  
30 Code, relating to corporate equity reduction interest losses, shall  
31 apply as provided.

32 (4) A net operating loss carryback shall not be carried back to  
33 any taxable year beginning before January 1, 2011.

34 (e) (1) (A) For a net operating loss for any taxable year  
35 beginning on or after January 1, 1987, and before January 1, 2000,  
36 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified  
37 to substitute "five taxable years" in lieu of "20 years" except as  
38 otherwise provided in paragraphs (2), (3), and (4).

39 (B) For a net operating loss for any income year beginning on  
40 or after January 1, 2000, and before January 1, 2008, Section

1 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
2 substitute “10 taxable years” in lieu of “20 taxable years.”

3 (2) For any income year beginning before January 1, 2000, in  
4 the case of a “new business,” the “five taxable years” referred to  
5 in paragraph (1) shall be modified to read as follows:

6 (A) “Eight taxable years” for a net operating loss attributable  
7 to the first taxable year of that new business.

8 (B) “Seven taxable years” for a net operating loss attributable  
9 to the second taxable year of that new business.

10 (C) “Six taxable years” for a net operating loss attributable to  
11 the third taxable year of that new business.

12 (3) For any carryover of a net operating loss for which a  
13 deduction is denied by Section 24416.3, the carryover period  
14 specified in this subdivision shall be extended as follows:

15 (A) By one year for a net operating loss attributable to taxable  
16 years beginning in 1991.

17 (B) By two years for a net operating loss attributable to taxable  
18 years beginning prior to January 1, 1991.

19 (4) The net operating loss attributable to taxable years beginning  
20 on or after January 1, 1987, and before January 1, 1994, shall be  
21 a net operating loss carryover to each of the 10 taxable years  
22 following the year of the loss if it is incurred by a corporation that  
23 was either of the following:

24 (A) Under the jurisdiction of the court in a Title 11 or similar  
25 case at any time prior to January 1, 1994. The loss carryover  
26 provided in the preceding sentence shall not apply to any loss  
27 incurred in an income year after the taxable year during which the  
28 corporation is no longer under the jurisdiction of the court in a  
29 Title 11 or similar case.

30 (B) In receipt of assets acquired in a transaction that qualifies  
31 as a tax-free reorganization under Section 368(a)(1)(G) of the  
32 Internal Revenue Code.

33 (5) (A) For a net operating loss for any taxable year beginning  
34 on or after January 1, 2015, in the case of a “qualified business,”  
35 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified  
36 to substitute “25 taxable years” in lieu of “20 taxable years.”

37 (B) For purposes of this paragraph, “qualified business” means  
38 ~~any trade or business~~ *a qualified business, as that term is used in*  
39 *Section 51043.3 of the Government Code*, that has primarily done

1 business within a HOPE Incentive Zone, as established by Section  
2 51043.1 of the Government Code, during the taxable year.

3 (f) For purposes of this section:

4 (1) “Eligible small business” means any trade or business that  
5 has gross receipts, less returns and allowances, of less than one  
6 million dollars (\$1,000,000) during the income year.

7 (2) Except as provided in subdivision (g), “new business” means  
8 any trade or business activity that is first commenced in this state  
9 on or after January 1, 1994.

10 (3) “Title 11 or similar case” shall have the same meaning as  
11 in Section 368(a)(3) of the Internal Revenue Code.

12 (4) In the case of any trade or business activity conducted by a  
13 partnership or an “S” corporation, paragraphs (1) and (2) shall be  
14 applied to the partnership or “S” corporation.

15 (g) For purposes of this section, in determining whether a trade  
16 or business activity qualifies as a new business under paragraph  
17 (2) of subdivision (e), the following rules shall apply:

18 (1) In any case where a taxpayer purchases or otherwise acquires  
19 all or any portion of the assets of an existing trade or business  
20 (irrespective of the form of entity) that is doing business in this  
21 state (within the meaning of Section 23101), the trade or business  
22 thereafter conducted by the taxpayer (or any related person) shall  
23 not be treated as a new business if the aggregate fair market value  
24 of the acquired assets (including real, personal, tangible, and  
25 intangible property) used by the taxpayer (or any related person)  
26 in the conduct of its trade or business exceeds 20 percent of the  
27 aggregate fair market value of the total assets of the trade or  
28 business being conducted by the taxpayer (or any related person).  
29 For purposes of this paragraph only, the following rules shall apply:

30 (A) The determination of the relative fair market values of the  
31 acquired assets and the total assets shall be made as of the last day  
32 of the first taxable year in which the taxpayer (or any related  
33 person) first uses any of the acquired trade or business assets in  
34 its business activity.

35 (B) Any acquired assets that constituted property described in  
36 Section 1221(1) of the Internal Revenue Code in the hands of the  
37 transferor shall not be treated as assets acquired from an existing  
38 trade or business, unless those assets also constitute property  
39 described in Section 1221(1) of the Internal Revenue Code in the  
40 hands of the acquiring taxpayer (or related person).



1 (2) In any case where a taxpayer (or any related person) is  
2 engaged in one or more trade or business activities in this state, or  
3 has been engaged in one or more trade or business activities in this  
4 state within the preceding 36 months (“prior trade or business  
5 activity”), and thereafter commences an additional trade or business  
6 activity in this state, the additional trade or business activity shall  
7 only be treated as a new business if the additional trade or business  
8 activity is classified under a different division of the Standard  
9 Industrial Classification (SIC) Manual published by the United  
10 States Office of Management and Budget, 1987 edition, than are  
11 any of the taxpayer’s (or any related person’s) current or prior  
12 trade or business activities.

13 (3) In any case where a taxpayer, including all related persons,  
14 is engaged in trade or business activities wholly outside of this  
15 state and the taxpayer first commences doing business in this state  
16 (within the meaning of Section 23101) after December 31, 1993  
17 (other than by purchase or other acquisition described in paragraph  
18 (1)), the trade or business activity shall be treated as a new business  
19 under paragraph (2) of subdivision (e).

20 (4) In any case where the legal form under which a trade or  
21 business activity is being conducted is changed, the change in form  
22 shall be disregarded and the determination of whether the trade or  
23 business activity is a new business shall be made by treating the  
24 taxpayer as having purchased or otherwise acquired all or any  
25 portion of the assets of an existing trade or business under the rules  
26 of paragraph (1).

27 (5) “Related person” shall mean any person that is related to  
28 the taxpayer under either Section 267 or 318 of the Internal  
29 Revenue Code.

30 (6) “Acquire” shall include any transfer, whether or not for  
31 consideration.

32 (7) (A) For taxable years beginning on or after January 1, 1997,  
33 the term “new business” shall include any taxpayer that is engaged  
34 in biopharmaceutical activities or other biotechnology activities  
35 that are described in Codes 2833 to 2836, inclusive, of the Standard  
36 Industrial Classification (SIC) Manual published by the United  
37 States Office of Management and Budget, 1987 edition, and as  
38 further amended, and that has not received regulatory approval for  
39 any product from the Food and Drug Administration.

40 (B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(l) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.